

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

Mountain East Conference	:	
	:	Civil Action No. 1:21-CV-104
Plaintiff,	:	
	:	Judge Kleeh
vs.	:	
	:	
Franklin University, <i>et al.</i>	:	
	:	
Defendants.	:	

MOTION FOR DEFAULT JUDGMENT

COMES NOW, Plaintiff, Mountain East Conference (“MEC”), by and through its undersigned counsel, and hereby moves this Court to enter a default judgment against Franklin University and Franklin University - Urbana, LLC, d/b/a Urbana University, in accordance with the provisions of Rule 55(a) and Rule 12(a)(4)(A) of the Federal Rules of Civil Procedure. In support of the motion, the Plaintiff sets forth its reasoning in the accompanying Memorandum in Support.

MOUNTAIN EAST CONFERENCE,

BY: SPILMAN THOMAS & BATTLE, PLLC

/s/ Jordan A. Sengewalt

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MEMORANDUM IN SUPPORT

I. Factual Background

On July 26, 2021, Plaintiff filed its Complaint against Franklin University and Franklin University - Urbana, LLC, d/b/a Urbana University for a breach of contract claim. ECF No. 1. On August 26, 2021, Defendants filed Defendants' Motion to Dismiss or, in the Alternative, to Transfer Venue. ECF No. 6. On September 9, 2021, Plaintiff timely filed its Response in Opposition to Defendants' Motion to Dismiss or, in the Alternative, to Transfer Venue. ECF No. 9. On September 16, 2021, Defendants filed Defendants' Reply in Support of Motion to Dismiss or, in the alternative, to Transfer Venue. ECF No. 10. On March 29, 2022, the Court entered its Memorandum Opinion and Order Denying Defendants' Motion to Dismiss. ECF No. 26.

II. Argument

Rule 12(a) of the Federal Rules of Civil Procedure states:

(a) Time to Serve a Responsive Pleading.

(4) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) If the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action.

Since the Court's Order was entered on March 29, 2022, according to Fed. R. Civ. P. 12(a)(4)(A), Defendants had until April 12, 2022, to file an answer to the Complaint. To this date, more than fourteen (14) days after Defendants were required to file an answer to the complaint, Defendants have refused to answer the complaint and have ignored the Federal Rules of Civil Procedure by failing to plead, and therefore, Plaintiff is entitled to the entry of default against Defendants in accordance with Fed. R. Civ. 55(a).

Rule 55(a) of the Federal Rules of Civil Procedure provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that

failure is shown by affidavit or otherwise, the clerk must enter the party's default." District courts have the authority to enter default judgment for failure to comply with its orders or rules of procedure. *Gill v. Graham. Noble & Assoc. LL*, 2008 U.S. Dist. 114422 (S.D. Fla. Aug. 25, 2008). Although Rule 55(a), Fed.R.Civ.P, refers to entry of default by the clerk, it is well established that a default also may be entered by the court. 6 Moore's Federal Practice P 55.03[1] at 55-31 (1976 ed.); *Moore v. Thomas*, 2008 U.S. Dist. LEXIS 111008 (N.D. Cal 2008) citing *Breuer Elec. Mfg. v. Toronado Sys, of Am., Inc.*, 687 F.2d 182, 185 (7th Cir. 1982). [T]rial judges are vested with discretion, which must be liberally exercised, in entering [default] judgments ..." *United States v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982).

Plaintiff is substantially prejudiced by Defendants' failure to defend this matter by filing the Answer as it obstructs the pursuit of ongoing discovery efforts. The parties recently requested a joint extension of timeframe, and the Court extended the discovery deadline to September 1, 2022. Plaintiff served discovery on July 27, 2021; Defendants served their responses on December 17, 2021, and supplemented on July 22, 2022. Plaintiff afforded time to Defendants for their responses to discovery and engaged in efforts, including a meet and confer conference on February 18, 2022, to amicably resolve related issues; nevertheless, Defendants continue to rely upon invalid boilerplate objections and their responses are not adequate under the Federal Rules of Civil Procedure. In addition, Plaintiff is in the process of scheduling and conducting depositions. In conducting the depositions, Plaintiff operates without Defendants' asserted denials or affirmative defenses to the Complaint and is thereby hindered from exploring the full scope of discovery with the deponents.

As such, Defendants' failure to abide by the Federal Rules of Civil Procedure and to file an appropriate answer following the Court's denial of Defendants' Motion to Dismiss, default judgment should be entered against Defendants.

III. Conclusion

For the reasons set forth above, Plaintiff, Mountain East Conference, respectfully requests this Court to enter a default against Defendants, Franklin University and Franklin University - Urbana, LLC, d/b/a Urbana University, in accordance with the provisions of Rule 55(a) and Rule 12(a)(4)(A) of the Federal Rules of Civil Procedure, and for such other relief that this court deems appropriate.

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CERTIFICATE OF SERVICE

I, Jordan A. Sengewalt, hereby certify that on the 8th day of August, 2022, the Motion for Default Judgment was filed electronically through the Court's CM/ECF with copies emailed to counsel, as follows:

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